Public Prosecutor v Ayar & Ors

HIGH COURT (IPOH) — CRIMINAL REVISION NOS 43–2 OF 2010, 43–3 OF 2010, 43–4 OF 2010 AND 43–5 OF 2010
TEO SAY ENG JC
9 JUNE 2010

Criminal Law — Offences — Fisheries — Foreign fishing vessels — Illegal fishing in Malaysian territorial waters in unregistered foreign fishing vessels — Application for extension of detention period — Whether magistrate right in refusing further remand — Whether blatant disregard of procedure relating to extension of remand — Fisheries Act 1985 ss 15(1)(a) & 47D

Criminal Procedure — Police investigation — Remand — Extension of detention period — Application before magistrate — Whether magistrate must state reasons when rejecting application for remand order — Whether failure of magistrate to given reasons for rejecting application mere irregularity — Whether wrong for court to use phrase 'dilepaskan dan dibebaskan' in dismissing remand application — Criminal Procedure Code s 117

Fisheries — Enforcement — Procedure — Fisheries Act 1985 s 47D — Application to magistrate for extension of remand where investigation could not be completed within twenty four hours — Procedure for application not stipulated in the Fisheries Act 1985 — Whether procedure for remand in s 117 of the Criminal Procedure Code applicable

On 12 March 2010, 19 Indonesian fishermen ('the respondents') were arrested for illegally fishing in Malaysian territorial waters in four unregistered foreign fishing vessels. The alleged offence was investigated under s 15(1)(a) of the Fisheries Act 1985 ('the Act'). On 13 March 2010, since the investigation could not be completed within 24 hours, the respondents were produced by the investigating officer ('IO') before the assistant district officer ('ADO') for a further detention of three days under s 47D of the Act. The ADO allowed the further detention. Since the investigation could not completed, on 15 March 2010, the IO produced the 19 respondents before the magistrate in four separate applications for further detention to enable the IO to complete the investigation. All the four applications were rejected by the learned magistrate and the respondents were ordered to be 'dilepaskan dan dibebaskan dari tahanan reman'. The Malaysia Maritime Enforcement Agency applied for a revision of the four orders made by the learned magistrate. The following issues arose for the court's consideration: (i)

whether the magistrate was right in law in refusing the further detention; (ii) whether the magistrate was required to give reasons for rejecting the applications; (iii) whether the orders given ie 'dilepaskan dan dibebaskan' were right in law; and (iv) whether the procedure laid down in s 117 of the Criminal Procedure Code ('CPC') is applicable to offences under the Act where s 47D of the Act is silent on the procedure to be followed where investigation cannot be completed within 24 hours.

Held, dismissing the application:

(1) The applications were made under s 47D of the Act which provides a procedure where investigation cannot be completed within 24 hours by a fisheries officer. Section 47D merely provides that where investigation cannot be completed within 24 hours, the fisheries officer may produce the suspect before a magistrate and the magistrate may authorise his detention for a term not exceeding 15 days on the whole. Section 47D unlike s 117 of the CPC does not stipulate the procedure to be complied with in applying for a remand order before a magistrate (see paras 8–9).

(2) Section 3 of the CPC lays down the general rule that all offences under the Penal Code ('Code') as well as all offences in statutes other than the Code must be inquired into and tried according to the same provisions of the CPC. However, if a particular written law, for instance, a statute which lays down a special procedure of trial or investigation governing offences committed under that statute, then the statute shall prevail over the CPC. If, on the other hand, the particular statute which is supposed to regulate the manner of investigation or trial is silent on the procedure to be followed in an investigation, the procedure laid down in the CPC shall then be applicable (see paras 17–18).

(3) A perusal of the documents showed that there was a blatant disregard of the procedure laid down for application of this nature on the part of the IO. The IO had failed to: (i) transmit an ID for the magistrate to act upon in her judicial inquiry whether or not to grant the remand order; (ii) state in the application before the magistrate that this was in fact a second application to further remand the respondents where the respondents had earlier on been remanded for three days by the ADO; and (iii) state in the second application what he had been doing in the investigation of the alleged offence during the first three days of the remand period granted by the ADO. Nothing was shown in the second application that diligent efforts had been carried out by the IO during the initial three days. Thus, the magistrate was right, in law, in refusing further remand of the respondents (see paras 22–26).

(4) Although s 117 of the CPC does not stipulate that a magistrate must give reasons when rejecting an application for a remand order, it is desirable that a magistrate should give his reasons when rejecting an application for a remand order. This is to enable the High Court to determine whether the order rejecting the application was right in law, when an application for revision is made. However, since the magistrate was right in law in refusing further detention of the respondents, the magistrate's failure to given reasons for rejecting the application was merely an irregularity as it did not affect the personal liberty of the respondents (see para 28).

(5) The phrase 'dilepaskan dan dibebaskan' means 'acquitted and discharged'. The phrase used was wrong in law in an application for a remand order. In rejecting the application, the magistrate should have ordered the respondents to be released instead of 'dilepaskan dan dibebaskan' (see para 29).

[Bahasa Malaysia summary
Pada 12 Mac 2010, 19 nelayan Indonesia ('responden-responden') ditangkap kerana menangkap ikan secara salah di kawasan perairan Malaysia menggunakan empat kapal penangkapan ikan asing yang tidak berdaftar. Kesalahan yang didakwa tersebut disiasat di bawah s 15(1)(a) Akta Perikanan 1985 ('Akta'). Pada 13 Mac 2010, memandangkan siasatan tidak dapat diselesaikan dalam masa 24 jam, responden-responden dikemukakan oleh pegawai penyiasat ('IO') di hadapan timbalan pegawai daerah ('ADO') untuk tahanan selanjutnya selama tiga hari di bawah s 47D Akta. ADO membenarkan tahanan selanjutnya. Memandangkan siasatan tidak boleh diselesaikan, pada 15 Mac 2010, IO mengemukakan 19 responden tersebut di hadapan majistret dalam empat permohonan berasingan untuk tahanan selanjutnya bagi membolehkan IO menyelesaikan siasatan. Kesemua empat permohonan tersebut ditolak oleh majistret yang bijaksana dan responden-responden diarah untuk 'dilepaskan dan dibebaskan dari tahanan reman'. Agensi Penguatkuasaan Maritim Malaysia memohon untuk semakan terhadap keempat-empat arahan tersebut yang dibuat oleh majistret yang bijaksana. Isu-isu berikutnya berbangkit untuk pertimbangan mahkamah: (i) sama ada majistret betul di sisi undang-undang dalam menolak untuk tahanan selanjutnya; (ii) sama ada majistret dikehendaki untuk memberikan alasan-alasan kerana menolak permohonan-permohonan tersebut; (iii) sama ada perintah-perintah yang diberikan iaitu 'dilepaskan dan dibebaskan' adalah betul di sisi undang-undang; dan (iv) sama ada prosedur yang ditetapkan dalam s 117 Kanun Prosedur Jenayah ('KPJ') beraplikasi terhadap kesalahan-kesalahan di bawah Akta di mana s 47D Akta tidak memperuntukkan prosedur yang patut diikut di mana siasatan tidak dapat diselesaikan dalam masa 24 jam.

Diputuskan, menolak permohonan:

(1) Permohonan-permohonan tersebut dibuat di bawah s 47D Akta yang

A mana memperuntukkan prosedur di mana siasatan tidak dapat diselesaikan dalam masa 24 jam oleh pegawai perikanan. Seksyen 47D hanya memperuntukkan bahawa di mana siasatan tidak dapat diselesaikan dalam masa 24 jam, pegawai perikanan boleh mengemukakan suspek di hadapan majistret dan majistret boleh B menguatkuasakan penahanannya untuk tempoh tidak melebihi 15 hari pada keseluruhannya. Seksyen 47D, tidak seperti s 117 KPJ, tidak menetapkan prosedur untuk dipatuhi dalam memohon perintah reman di hadapan majistret (lihat perenggan 8–9).

C (2) Seksyen 3 KPJ menetapkan peraturan-peraturan am bahawa kesemua kesalahan di bawah Kanun Keseksaan ('Kanun') dan juga kesemua kesalahan dalam statut selain daripada Kanun mesti disiasat dan dibicara mengikut peruntukan-peruntukan sama KPJ. Walau bagaimanapun, jika undang-undang bertulis tertentu, contohnya, statut D yang menetapkan prosedur khusus perbicaraan atau siasatan yang mengawal kesalahan-kesalahan yang dilakukan di bawah statut, oleh itu statut akan mengatasi KPJ. Jika sebaliknya, statut tertentu yang patut mengawal cara siasatan atau perbicaraan tidak memperuntukkan prosedur yang patut dipatuhi di dalam siasatan, prosedur yang E ditetapkan di dalam KPJ oleh itu beraplikasi (lihat perenggan 15–16).

(3) Penelitian terhadap dokumen-dokumen menunjukkan bahawa terdapat sikap tidak peduli terang-terangan terhadap prosedur yang ditetapkan untuk permohonan seperti ini oleh IO. IO telah gagal untuk: (i) F menghantar ID untuk majistret bertindak ke atasnya dalam kehakiman siasatannya sama ada untuk membenarkan perintah reman atau tidak; (ii) menyatakan di dalam permohonan di hadapan majistret bahawa ini sebenarnya permohonan kedua untuk melanjutkan tahanan responden-responden di mana responden-responden sebelumnya telah G ditahan selama tiga hari oleh ADO; dan (iii) menyatakan di dalam permohonan kedua apa yang telah dilakukan dalam siasatan kesalahan yang didakwa semasa tiga hari pertama tempoh reman yang dibenarkan oleh ADO. Tidak ada apa-apa pun ditunjukkan di dalam permohonan kedua bahawa usaha yang berterusan telah dijalankan oleh IO semasa H tiga hari pertama tersebut. Oleh itu, majistret betul di sisi undang-undang dalam menolak reman selanjutnya ke atas responden-responden (lihat perenggan 19–23).

(4) Walaupun s 117 KPJ tidak menetapkan bahawa majistret mesti memberi alasan-alasan apabila menolak permohonan untuk perintah I reman, adalah lebih baik majistret memberikan alasan-alasannya apabila menolak permohonan untuk perintah reman. Ini untuk membolehkan Mahkamah Tinggi menentukan sama ada perintah menolak permohonan tersebut adalah betul di sisi undang-undang, apabila permohonan untuk semakan dibuat. Walau bagaimanapun,

memandangkan majistret betul di sisi undang-undang dalam menolak tahanan selanjutnya terhadap responden-responden, kegagalan majistret untuk memberikan alasan-alasan kerana menolak permohonan tersebut adalah luar aturan semata-mata kerana ia tidak menjejaskan kebebasan individu responden-responden (lihat perenggan 25).

(5) Frasa 'dilepaskan dan dibebaskan' bermaksud 'acquitted and discharged'. Frasa yang digunakan tersebut adalah salah di sisi undang-undang di dalam permohonan untuk perintah reman. Di dalam menolak permohonan tersebut, majistret sepatutnya mengarahkan responden-responden dilepaskan dan bukannya'dilepaskan dan dibebaskan' (lihat perenggan 26).]

Notes

For a case on remand, see 5(1) *Mallal's Digest* (4th Ed, 2007 Reissue) para 2782.

For cases on fisheries in general, see 7(1) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3890–3915.

For cases on fisheries offences, see 4 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1168–1191.

Cases referred to

Detention of R Sivarasa & Ors, Re the [1996] 3 MLJ 611, HC (refd)
Lau Kong Peng & Ors v PP [1998] 6 MLJ 501, HC (refd)
Leonard Teoh Hooi Leong v PP [2010] 3 MLJ 373, CA (refd)
Polis Diraja Malaysia v Keong Mei Cheng Audrey [1994] 3 MLJ 296, HC (refd)
PP v Audrey Keong Mei Cheng [1997] 3 MLJ 477, CA (refd)
Syed Mohammad b Syed Isa; Mohd Rosdi bin Jaafar; Thiagarajah a/l Palaniandy; Rajis a/l Seeni Deen & Ors, Re: [2001] MLJU 163, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 31
Criminal Procedure Code ss 3, 117, 117(1), (3), (4), (5), (6), (7), 119, 265, 266, 267, 323(1), 325
Federal Constitution art 5(1)
Fisheries Act 1985 ss 15(1)(a), 47D

Mirza bt Mohamad (Deputy Public Prosecutor, Malaysia Maritime Enforcement Agency) for the applicant.

Teo Say Eng JC:

APPLICATION FOR REVISION

[1] This is an application by the learned legal adviser of the Malaysia

Maritime Enforcement Agency, Tuan Azman bin Ahmad for a revision of the four orders made by the learned magistrate Puan Norashikin bt Mokhtar at the Magistrates Court Manjung Perak in rejecting the applications for further detention of 19 Indonesian fishermen. The application for revision was made under s 31 of the Courts of Judicature Act 1964 to be read with s 323(1) and s 325 of the CPC.

FACTS OF CASE

[2] On 12 Mac 2010 between 12.05pm and 1.35pm, 19 Indonesian fishermen ('the respondents') were arrested for illegally fishing in our Malaysian territorial waters in four unregistered foreign fishing vessels. The alleged offence was investigated under s 15(1)(a) of the Fisheries Act 1985 which carries a fine not exceeding RM1m each in the case of the owner or master and RM100,000 in the case of every member of the crew.

[3] On 13 March 2010 between 6.58pm and 7.15pm, since the investigation cannot be completed within the period of 24 hours, all the 19 respondents were produced by the investigating officer, Encik Ramli bin Abdullah ('IO') before the assistant district officer, Encik Rosdi bin Mohd Yaacob, Perak Tengah in four separate applications for a further detention of three days under s 47D of the Fisheries Act 1985. The assistant district officer of Perak Tengah ordered that all the 19 respondents to be detained for three days to enable the IO to complete the investigations.

[4] Since the investigation could not completed, on 15 March 2010, the IO produced all the 19 respondents before the magistrate in Manjung, Puan Norashikin bt Mokhtar in four separate applications for a further detention from 15 March 2010 to 25 March 2010 to enable the IO to complete the investigation.

[5] The grounds to support the said applications were as follows:

(a) Siasatan ke atas kes ini masih belum dapat diselesaikan.

(b) Melibatkan pengambilan keterangan tertuduh dan saksi yang ramai.

(c) Memerlukan keterangan pakar bagi pengesahan peralatan menangkap ikan.

(d) Memerlukan seorang pakar jurufoto untuk mengambil gambar-gambar yang berkaitan kes.

(e) Pakar pemetaan (JUPEM) diperlukan.

[6] All the four applications were rejected by the learned magistrate and all the respondents were ordered to be 'dilepaskan dan dibebaskan dari tahanan reman'. The learned legal advisor of the Malaysia Maritime Enforcement Agency on 17 March 2010 applied to the High Court at Ipoh for a revision of the four orders made by the magistrate on 15 March 2010 on the ground that the magistrate's orders were wrong in law for two reasons:

(a) no reasons were given by the magistrate in refusing further detention of the respondents; and

(b) the orders of 'dilepaskan dan dibebaskan' in the case of remand proceedings were wrong in law.

[7] I then called for the records of the four applications from the Magistrates Court Manjung and had them registered as Criminal Revision Nos 43–2 of 2010, 43–3 of 2010, 43–4 of 2010 and 43–5 of 2010. I then fixed the four criminal revisions for hearing on 23 March 2010.

THE ISSUES BEFORE THIS COURT

(a) whether the magistrate was right in law in refusing further detention of the respondents;

(b) whether the magistrate was required to give reasons for rejecting the applications for further detention; and

(c) whether the orders given ie 'dilepaskan dan dibebaskan' in such applications for a remand order were right in law.

[8] In determining the aforesaid issues, one must bear in mind that the applications were made under s 47D of the Fisheries Act 1985 which provides a procedure where investigation cannot be completed within 24 hours by a fisheries officer.

[9] It is to be noted that s 47D merely provides that where investigation cannot be completed within 24 hours, the fisheries officer may produce the suspect before a magistrate and the magistrate may authorise his detention for a term not exceeding 15 days on the whole. Section 47D unlike s 117 of the CPC does not stipulate the procedure to be complied with in applying for a remand order before a magistrate.

A **[10]** The issue here is whether the procedure laid down in s 117 is applicable to offences under the Fisheries Act 1985 where s 47D is silent on the procedure to be followed where investigation cannot be completed within 24 hours by a fisheries officer?

B **[11]** I append below s 47D of the Fisheries Act 1985 and s 117 of the CPC for easy reference:

(a) Section 47D of the Fisheries Act:

C (1) Whenever any person is arrested and detained in custody by a Fisheries Officer for an offence under this Act, and it appears that the investigation cannot be completed within the period of twenty-four hours from the time the person is arrested, any Fisheries Officer may produce such person before a Magistrate for the purpose of subsection (2).

D (2) The Magistrate before whom such person is produced may, whether he has or has no jurisdiction to try the case, from time to time authorize the detention of such person in such custody as such Magistrate thinks fit for a term not exceeding fifteen days on the whole.

(b) Section 117 of the CPC:

E (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries

F in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.

(2) The Magistrate before whom an accused person is produced under this section may, whether he has or has no jurisdiction to try the case, authorize the detention of the accused in such custody as follows:

G (a) If the offence which is being investigated is punishable with imprisonment of less than fourteen years, the detention shall not be more than four days on the first application and shall not be more than three days on the second application; or

H (b) If the offence which is being investigated is punishable with death or imprisonment of fourteen years or more, the detention shall not be more than seven days on the first application and shall not be more than seven days on the second application.

(3) The officer making the investigation shall state in the copy of the entries in

I the diary referred to in subsection (1), any period of detention of the accused immediately prior to the application, whether or not such detention relates to the application.

(4) The Magistrate, in deciding the period of detention of the accused person, shall take into consideration any detention period immediately prior to the application, whether or not such detention relates to the application.

(5) The Magistrate in deciding the period of detention of the accused shall allow representations to be made either by the accused himself or through a counsel of his choice.

(6) If the Magistrate has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a magistrate having such jurisdiction or, if the case is triable only by the High Court, before himself or another Magistrate having jurisdiction with a view to transmission for trial by the High Court.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

COMPARISON OF THE TWO PROVISIONS

[12] A comparison of the two provisions would show the similarities between the two provisions as follows:

(a) Both the provisions deal with what happens to a person who has been arrested and detained by the enforcement agencies and the enforcement agencies are not allowed to detain him for more than 24 hours.

(b) The person arrested and not released shall without unreasonable delay, be produced before a magistrate.

(c) Both the sections contemplate more than one application for the remand order. The magistrate is required to satisfy himself on every application if detention is at all necessary and if so to determine the length of time actually required to complete the investigation. Section 47D of the Fisheries Act does not limit the number of applications to be made but the maximum period for remand that may be granted as the magistrate thinks fit is 15 days on the whole. Whereas s 117 of the CPC contemplates only two applications to be made and has limited a maximum of four days on the first application and three days on the second application in respect of offences punishable with imprisonment of less than 14 years and a maximum of seven days on the first application and another seven days on the second application in respect of offences punishable with death or imprisonment of 14 years or more.

WHAT IS MISSING FROM S 47D

[13] Apart from the aforesaid similarities, s 47D does not provide for steps to be taken when a person arrested by the fisheries officer is produced before

A the magistrate whereas s 117 does lay down the strict procedural requirements to be complied with when a person arrested by the police is produced before a magistrate.

B **[14]** Section 117 has stipulated the following fundamental steps which must be taken by the enforcement agencies whenever an application for a remand order is made before a magistrate.

(a) It is mandatory for the enforcement agency to produce the investigation diary ('ID'). The ID must meet the following requirements:

C

(i) It must be in the form specified by s 119 of the CPC setting forth:

(A) the time at which the order, if any, for investigation reached him.

(B) the time at which he began and closed investigation.

D

(C) the place or places visited by him.

(D) a statement of the circumstances ascertained through his investigation: *Leonard Teoh Hooi Leong v PP* [2010] 3 MLJ 373.

E (ii) It must be replete with grounds indicating that the accusation or information against the person arrested is well founded: s 117(1) of the CPC and *Polis Diraja Malaysia v Keong Mei Cheng Audrey* [1994] 3 MLJ 296 at p 303.

F (iii) The grounds must show a nexus between the person arrested and the suspected offence: see *Re the Detention of R Sivarasa & Ors* [1996] 3 MLJ 611.

(iv) It must also explain the necessities of the case for remand or further remand.

G

(v) It must show whether deligent efforts in investigation have been carried out: see in *Re: Syed Mohammad b Syed Isa; Mohd Rosdi bin Jaafar; Thiagarajah a/l Palaniandy; Rajis a/l Seeni Deen & Ors* [2001] MLJU 163.

H (vi) It must state any period of detention of the person arrested immediately prior to the application whether or not such detention relates to the application: s 117(3) of the CPC. The failure to transmit a copy of an ID or failure to satisfy one of the abovementioned requirements in the ID transmitted is fatal to the

I application as it meant that the magistrate did not have the prescribed material to act upon in her judicial enquiry whether to order further remand. She had no jurisdiction to make the order of remand: *Re the Detention of R Sivarasa & Ors* [1996] 3 MLJ 611; *Public Prosecutor v Audrey Keong Mei Cheng* [1997] 3 MLJ 477 (CA).

[15] The law has also imposed on the magistrate the following duties when an application for a remand order is made under s 117 of the CPC before him:

(a) Before granting the remand order, the magistrate must satisfy himself that there are grounds for believing that the accusation or information is well founded: s 117(1) of the CPC.

(b) The magistrate shall take into consideration any detention period immediately prior to the application whether or not such detention relates to the application: s 117(4) of the CPC.

(c) The magistrate in deciding the period of detention, shall allow representations to be made either by the accused or through counsel of his choice: s 117(5) of the CPC.

(d) If the magistrate has no jurisdiction to try the case and considers further detention unnecessary he may order the accused person to be produced before a magistrate having such jurisdiction or if the case is triable only by the High Court, before himself or another magistrate having jurisdiction with a view to transmission for trial by the High Court: s 117(6) of the CPC.

(e) The magistrate authorising detention shall record his reasons for so doing: s 117(7) of the CPC.

Whether the strict procedural requirements laid down in S 117 of the CPC are applicable to s 47D of the Fisheries Act 1985

[16] In determining whether the strict procedural requirements as laid down in s 117 of the CPC are applicable to investigations of offences committed under the Fisheries Act 1985, s 3 of the CPC may be of help in getting a solution to the issue raised. Section 3 of the CPC provides as follows:

> All offences under the Penal Code shall be inquired into and tried according to the provisions hereinafter contained, and all offences under any other law shall be inquired into and tried according to the same provisions: subject however to any written law for the time being in force regulating the manner or place of inquiring into or trying such offences.

[17] The CPC was intended to be an exhaustive pronouncement of the law relating to criminal procedure in Malaysia. Prior to 10 January 1976, the Criminal Procedure was governed by four separate codes, namely, one each for the Federated Malay States, the Straits Settlements, Sabah and Sarawak. The Code was made applicable throughout Malaysia as from 10 January 1976 and it provides one common procedure for all offences. Section 3 of the

A CPC lays down the general rule that all offences under the Penal Code as well as all offences in statutes other than the Penal Code must be inquired into and tried according to the same provisions of the CPC. However, if a particular written law, for instance, a statute which lays down a special procedure of trial or investigation governing offences committed under that B statute, then the statute shall prevail over the CPC. This is the principle of *generalia specialibus non derogant*: a specific provision in a specific statute overrides a general provision in a general statute.

C **[18]** If, on the other hand, the particular statute which is supposed to regulate the manner of investigation or trial is silent on the procedure to be followed in an investigation the procedure laid down in the CPC shall then be applicable.

D *Whether the applications had complied with procedures laid down in s 117 of the CPC*

[19] Having determined the procedure to be followed in an application for a remand order in respect of an offence investigated under the Fisheries Act E 1985, the court has to examine the applications to determine whether the IO has complied with the aforesaid procedures laid down under s 117 of the CPC.

[20] I append below one of the four standard applications put up by the IO F for a remand order under s 47D of the Fisheries Act 1985 for easy reference.

(a) The application in respect of Ipoh Criminal Revision 43–2 of 2010 which is similar to the other three applications consists of the following documents which were marked as Lampiran A1, Lampiran C1 and Lampiran B1 respectively:

G

(i) Lampiran A1

Pangkor Report 000324/10.

H

ADUAN

Saya bersama anggota KM Malawali membuat rondaan pada 12 Mac 2010. Lebih kurang 1335H kelihatan sebuah vessel yang tidak bernombor sedang berada di posisi 04 18.01'N, 100 00.75'E. pada lebih kurang jam 1340H saya diarahkan oleh pegawai memerintah untuk I menahan bot tersebut di posisi 04 17.99'N, 100 00.75'E. Setelah pemeriksaan dibuat, bot tersebut didapati berasal dari Negara Indonesia dan berada di dalam perairan Malaysia, saya mengarahkan LK II Maritim Adnan bin Kamaruzan dan LK II Maritim Nik Amar Shahidan bin Nik Azlan mengiringi vessel tersebut ke Jeti LKIM Kg. Acheh, Sitiawan untuk diserahkan kepada Pegawai Penyiasat DM3, Lumut. Seramai 4 krew bot

warga Indonesia yang tiada dokumen pengenalan diri ditahan (1) Nama: Ayar (Tekong) berumur 40 tahun. (2) Nama: Junaidi berumur 21 tahun (3) Nama: Mohd Nor berumur 60 tahun dan (4) Nama: Jamaludin berumur 48 tahun. Peralatan yang ditahan (1) 1x Vessel yang tidak bernombor (2) 1 set peralatan memancing (3) 1x Magnetic kompas dan (4) Ikan campur dianggarkan 100 kg. Tindakan seterusnya diserahkan kepada Pegawai Penyiasat Agensi Penguatkuasaan Maritim Malaysia. Sekian aduan saya.

(ii) Lampiran C1

Agensi Penguatkuasaan Maritim Malaysia

Permohonan Reman

13 Mac 2010.

Penolong Pegawai Daerah

Daerah Perak Tengah Perak.

Perak

Tuan,

Per: Memohon Tahanan Reman di Bawah Seksyen 47D Akta Perikanan 1985 (Pindaan 1993)

Berhubung dengan perkara di atas, dengan hormatnya dimaklumkan bahawa pada 12.3.2010 lebih kurang jam 1340H, KM Malawati telah menahan nakhoda dan 3 orang awak-awak warga Indonesia dari sebuah vessel penangkapan ikan asing tanpa bernombor daftar (warna merah dibahagian badan) melakukan kesalahan menangkap ikan di perairan Malaysia tanpa kebenaran sah dari Ketua Pengarah Perikanan, vessel tersebut beroperasi di posisi Lat 04 Darjah 17.99' Utara Long 100 Darjah 00.75' Timur jarak lebih kurang 31 batu nautika dari barat daya Pulau Pangkor. Kesalahan adalah di bawah Seksyen 15 (1) (a) Akta Perikanan 1985.

Senarai OYDS adalah seperti berikut:

Bil.	Nama.	Umur	Bangsa
i.	AYAR	40 Thn.	Indonesia
ii.	JUNAIDI	21 Thn.	Indonesia
iii.	MOHD NOR	60 Thn.	Indonesia
iv.	JAMALUDIN	48 Thn.	Indonesia.

Kesemua pengenalan OYDS adalah melalui akuan mulut mereka sendiri.

Oleh kerana siasatan tidak dapat diselesaikan atas alasan seperti berikut:

(a) Siasatan ke atas kes ini masih belum dapat diselesaikan.

(b) Melibatkan pengambilan keterangan tertuduh dan saksi.

(c) Memerlukan seorang jurugambar untuk mengambil gambar-gambar yang berkaitan dengan kes ini.

(d) Memerlukan keterangan pakar bagi pengesahan peralatan menangkap ikan.

(e) Pakar Pemetaan (JUPEM) diperlukan.

Oleh yang demikan, saya memohon kepada tuan supaya mereka ditahan selama 3 hari (tiga hari) iaitu dari 13 Mar 2010 sehingga 15 Mar 2010.

Sekian, terima kasih.

Tandatangan

Pegawai Penyiasat

RAMLI BIN ABDULLAH

DM3 Lumut.

13.3.2010

6.58 pm.

I.O: Ramli bin Abdullah.

OYDA: Ayar

: Junaidi

: Mohd. Nor

: Jamaludin

OYDS: Faham Bahasa Melayu

OYDS: Tidak cedera.

I.O: Maklum kedutaan Indonesia.

OYDS: reman 3 hari dari 13.3.2010 hingga 15.3.2010.

Untuk:

1. Keterangan tertuduh dan saksi.

2. Ambil gambar

3. Pemetaan.

Tandatangan

Rosdi b. Mohd. Yaacob.

Penolong Pegawai

Daerah Perak Tengah.

(iii) Lampiran B1

Agensi Penguatkuasaan Maritim Malaysia

Permohonan Reman

15 Mar 2010

Puan Majistret

Mahkamah Daerah Manjung

Perak

Puan,

Per: Memohon Lanjutan Tahanan Reman di Bawah Seksyen 47D Akta Perikanan 1985 (Pindaan 1993)

Berhubung dengan perkara di atas, dengan hormatnya dimaklumkan bahawa pada 12.3.2010 lebih kurang jam 1340H, KM Malawati telah menahan nakhoda dan 3 orang awak-awak warga Indonesia dari sebuah vessel penangkapan ikan asing tanpa bernombor daftar (warna merah dibahagian badan) melakukan kesalahan menangkap ikan di perairan Malaysia tanpa kebenaran sah dari Ketua Pengarah Perikanan, vessel tersebut beroperasi di posisi Lat 04 Darjah 17.99' Utara Long 100 Darjah 00.75' Timur jarak lebih kurang 31 batu nautika dari barat daya Pulau Pangkor. Kesalahan adalah di bawah Seksyen 15(1)(a) Akta Perikanan 1985.

Senarai OYDS adalah seperti berikut:

Bil.	Nama.	Umur	Bangsa
vi.	AYAR	40 Thn.	Indonesia
vii.	JUNAIDI	21 Thn	Indonesia
viii.	MOHD NOR	60 Thn.	Indonesia
ix.	JAMALUDIN	48 Thn.	Indonesia

Kesemua pengenalan OYDS adalah melalui akuan mulut mereka sendiri.

Oleh kerana siasatan tidak dapat diselesaikan atas alasan seperti berikut:

(a) Siasatan ke atas kes ini masih belum dapat diselesaikan.

(b) Melibatkan pengambilan keterangan tertuduh dan saksi.

(c) Memerlukan seorang jurugambar untuk mengambil gambar-gambar yang berkaitan dengan kes ini.

(d) Memerlukan keterangan pakar bagi pengesahan peralatan menangkap ikan.

(e) Pakar Pemetaan (JUPEM) diperlukan.

Oleh yang demikan, saya memohon kepada Puan supaya mereka ditahan selama 11 hari (sebelas hari) iaitu dari 15 Mar 2010 sehingga 25 Mar 2010.

Sekian, terima kasih.

Tandatangan

Pegawai Penyiasat

RAMLI BIN ABDULLAH

DM3 Lumut.

15.3.2010

I.O for Maritim.

OYDS: 1,2,3,4 XXX (tulisan tidak dapat dibaca).

Mahkamah: OYDS 1,2,3 & 4 dilepaskan dan dibebaskan, XXX (tulisan tidak dapat dibaca)

Tandatangan,

Norashikin binti Mokhtar.

15.3.2010.

Whether the magistrate was right in law in refusing further detention of the respondents under s 47D of the Fisheries Act 1985

[21] A perusal of the aforesaid documents put up in the application for further detention under s 47D shows that there was a blatant disregard of the procedure laid down for application of this nature on the part of the IO.

[22] First and foremost the IO had failed to transmit an ID for the magistrate to act upon in her judicial inquiry whether or not to grant the remand order. In fact the magistrate would be right in law, to refuse to order further detention of the respondents based on this ground alone.

[23] The IO had also failed to state in the application before the magistrate that this was in fact a second application to further remand the respondents where the respondents had earlier on been remanded for three days by an assistant district officer. What the IO did was just to enclose the first application marked as Lampiran C1 made before the assistant district officer who had granted a remand order to detain the respondents from 13 March 2010 to 15 March 2010. It is not any document containing information which is produced before a magistrate can be regarded as a diary of the entries prescribed under s 119 of the CPC. The exhibition of the first application in this case is therefore not sufficient to constitute copy of entries in the diary as prescribed under s 119 of the CPC.

[24] Last but not least, the IO had failed to state in the second application what he had been doing in the investigation of the alleged offence during the first three days of the remand period granted by the assistant district officer.

It is to be noted that the contents of the first application before the assistant district officer and the contents the second application before the magistrate are identical.

[25] What the IO did was to reproduce the contents of the first application verbatim to apply for further remand before the magistrate. What he had amended were the heading of the application, and the period of remand requested. Nothing had been shown in the second application that diligent efforts had been carried out by the IO during the initial three days of detention. For the above reasons, I find that the magistrate was right, in law, in refusing further remand of the respondents.

Whether the magistrate was required to give reasons for rejecting the application for further detention

Duty to record reasons

[26] It is not disputed that the magistrate did not give any reasons for refusing the remand order. In the circumstances, the court would not know on what grounds the application was rejected. It is to be noted that s 117 only requires the magistrate to give his reasons for authorising any detention. This is important because it deprives a person of his personal liberty, a fundamental right as guaranteed under art 5(1) of the Federal Constitution.

[27] Failure to give reasons for such authorisation may result in the order being set aside: see *Lau Kong Peng & Ors v Public Prosecutor* [1998] 6 MLJ 501. On the other hand, although s 117 does not stipulate that a magistrate must also give reasons when rejecting an application for a remand order, I am of the view that it is desirable that a magistrate should give his reasons when rejecting an application for a remand order. This is to enable the High Court to determine whether the order rejecting the application was right in law, when an application to revise the order of the magistrate was made in the High Court. In the present case, since I had ruled that the magistrate was right in law in refusing further detention of the respondents for the reasons given above, I am of the view that the magistrate's failure to given reasons for rejecting the application was merely an irregularity as it does not affect the personal liberty of the respondents.

Whether the orders given ie 'dilepaskan dan dibebaskan' in an application for a remand order were right in law

[28] On the issue whether the order that is 'dilepaskan dan dibebaskan' was right in law, one must first understand the meaning of 'dilepaskan dan dibebaskan'. The phrase 'dilepaskan dan dibebaskan' if translated into the

English language means 'acquitted and discharged'. In the circumstances, I rule that the phrase used is wrong in law in an application for a remand order. In rejecting the application, the magistrate should order the respondents to be released instead of 'dilepaskan dan dibebaskan'.

Other issue: handwritings of the magistrate

[29] Apart from the aforesaid issues, I would also like to raise another issue of the handwritings of the magistrates. The court notes that some magistrates have forgotten that it is a mandatory requirement for them to record the notes of proceedings, be it an enquiry or trial, in their legible handwritings. It is therefore my duty to remind them of ss 265, 266 and 267 of the CPC which govern the manner of recording evidence in inquiries and trials. I append below the said provisions for easy reference:

[30] Section 265:

> Manner of recording evidence
>
> In inquiries and trials under this Code by or before a Magistrate the evidence of the witnesses shall be recorded in the manner provided by this Chapter.

[31] Section 266(1):

> Recording evidence in summons cases
>
> In summons cases tried before a Magistrate the Magistrate shall, as the examination of each witness proceeds, make a note of the substance of what the witness deposes, and such note shall be written by the Magistrate with his own hand in *legible handwriting* and shall form part of the record.

[32] Section 267:

> Recording evidence in other cases
>
> In all other trials before a Magistrate's Court and in all inquiries under Chapter XI, the evidence of each witness shall be taken down in *legible handwriting* by the presiding Magistrate and shall form part of the record.

[33] It is pertinent to note from the aforesaid provisions that the evidence taken down by magistrates in legible handwriting shall form part of the records of proceedings. It is therefore the duty of magistrates to ensure that their handwritings are legible and others will have no difficulty in reading their notes.

[34] If their handwritings were illegible, this would pose a problem to the High Court when a case comes up for revision from the subordinate court and the judge calls for the original records of proceeding from the subordinate court but is unable to read the handwritings of the presiding officers of the subordinate courts. This is exactly the problem which I was facing when I could not decipher the handwritings of the magistrate in her records of proceedings. I strongly believe that such problems could have been avoided had the magistrate taken the trouble to ensure that their handwritings were legible.

DECISION

[35] For the above reasons, I disallow this application to set aside the four orders made by the magistrate in refusing further remand. I also order that the word 'dibebaskan' to be deleted from the magistrate's orders.

Application dismissed.

Reported by Ashgar Ali Ali Mohamed